Tong Khing Kia & Anor v Yeo Kong Boon

HIGH COURT (SINGAPORE) — DISTRICT COURT APPEAL NO 71 OF 1989
CHAO HICK TIN J
31 DECEMBER 1990

Tort — Negligence — Motor accident — Front-to-back vehicular collision — Whether driver of vehicle behind necessarily liable to some extent

Tort — Negligence — Motor accident — Highway code — Breach of — Whether establishes liability — Road Traffic Act (Cap 276, 1985 Ed), s 112(4)

Evidence — Impeachment of credit of witness — Weight to be accorded

This was an appeal by the first and second defendants (the first and second appellants herein) against a decision of the learned magistrate who held that the first defendant was responsible to the extent of 85% for a motor accident which occurred on 30 November 1986 along Dunearn Road. The third party was held to be liable only for 15%. The third party, one Yeo Kong Boon, was driving motor car EL 8689M along Dunearn Road when at a spot just immediately after the junction of Rifle Range Road/Dunearn Road, it stopped and was collided into by motor bus TIBS 259D driven by the first defendant. Motor car EL 8689M belonged to the plaintiff who had brought an action to recover compensation for damage caused to the motor car. By a third party notice, the defendants sought indemnity/contributions from Yeo Kong Boon.

Held, allowing the defendants' appeal:
The third party must be held solely responsible for the accident. By stopping abruptly on a main roadway without giving any signal, he had created a dangerous situation which was the cause of the accident. The first defendant took the only evasive step possible in the circumstances, ie by braking; yet the accident could not be avoided. It does not follow that in a case of a front-to-back collision the vehicle that followed behind must necessarily be negligent to some extent.

Cases referred to
1 *Kerry* v *Carter* [1969] 1 WLR 1372 (refd)
2 *Watt* v *Thomas* [1947] AC 484 (refd)
3 *Benmax* v *Austin Motor Co* [1955] 1 All ER 326 (refd)
4 *Barna* v *Hudes Merchandising Corp* (1962) 106 SJ 194 (refd)

Legislation referred to
Road Traffic Act (Cap 276, 1985 Ed) s 112(4)

Looi Pek Hong for the defendants/appellants.
Chris Chng for the third party/respondent.

Cur Adv Vult

Chao Hick Tin J: This was an appeal by the first and second defendants (the first and second appellants herein) against a decision of the learned magistrate who held that the first defendant was responsible to the extent of 85% for a motor accident which occurred on 30 November 1986 along Dunearn Road. The third party was held to be liable only for 15%. I allowed the appeal and held that the third party (the respondent in this appeal) was wholly responsible for the accident. I ordered that the third party indemnify the defendants to the extent of 100% of the damages and costs which the defendants were ordered to pay to the plaintiffs. I also ordered the third party to pay the defendants' costs here and below. I now give my reasons.

The accident happened on 30 November 1986 at about 2.30pm. One Yeo Kong Boon (the third party) was driving motor car EL 8689M along Dunearn Road when at a spot just immediately after the junction of Rifle Range Road/Dunearn Road, it stopped and was collided into by motor bus TIBS 259D driven by the first defendant. Motor car EL 8689M belonged to the plaintiff, who had brought this action to recover compensation for the damage caused to the motor car. By a third party notice, the defendants sought indemnity/contributions from Yeo Kong Boon.

The defendants contended that the learned magistrate erred in law and in fact in holding that the third party's action only played a relatively small part in the accident. They submitted that the magistrate failed to draw the proper and necessary inferences or make the proper findings from the circumstances of the case and further failed to give sufficient weight to the fact that the third party had breached five important rules in the Highway Code.

I was conscious of the principle that an appellate court should not disturb a finding of fact by a lower court or its apportionment of liability unless it erred on a matter of principle, or had wrongly appreciated the facts or the finding was contrary to the weight of the evidence: see Denning MR in *Kerry* v *Carter*[1] at p 1376 and the most often cited passage of Lord Thankerton in *Watt* v *Thomas*[2] at p 488. The position would be different if the point in dispute relates to the proper inference to be drawn from proved facts; in that situation an appellate court is generally in as good a position to evaluate the evidence as the trial judge — see Lord Reid in *Benmax* v *Austin Motor Co*[3] at p 329.

At the hearing before the magistrate, quantum was agreed at $3,495. The evidence for the plaintiff was given by the third party, Yeo Kong Boon, the driver of EL 8689M. His evidence was that at the material time he was driving along Dunearn Road in the direction towards the city. He had a passenger sitting next to him. He intended to pick up a friend (one Lee Kok Keong — hereinafter called 'Lee') who was waiting for him immediately after the junction of Rifle Range Road/Dunearn Road. He gave a left-hand signal and stopped the car. Lee opened the rear nearside door of the car, stepped into it and was about to close the door when Yeo felt a vehicle collide into his car from the rear. The collision pushed his vehicle forward and his friend Lee fell 'onto the road from inside the car'. Lee was injured, with bleeding from the head, and was taken to hospital.

Though at that time it was raining, the third party said that 'part of the (road) surface was dry because before the rain it was hot'. He insisted that the road surface was not wet. He also said the traffic was light and that when he looked through his rear mirror 'other than the bus other vehicles were far away'. When he was confronted with his police report where he stated that it was raining and the ground was wet and the traffic was heavy he tried to wriggle out of it by saying that the accident happened a long time ago. He then agreed that the road was wet. As regards the traffic condition, he explained that he 'now had the impression the traffic was light'. He said he remembered there were vehicles on his right and the bus was behind him though he 'could not be sure how many vehicles were behind'. He agreed that the stretch of Dunearn Road had a speed limit of 70 kmph. He estimated that it must have taken a minute for his friend to get into the car before the collision occurred.

The plaintiff and the third party also called the investigating officer (PW1) to testify on their behalf. However, as PW1 was not an eye-witness to the accident, I did not think anything he said was of assistance to me in determining how the accident happened. But PW1 did say that when he arrived at the scene the road was wet.

In his evidence the first defendant told the court that he was driving the bus on the first lane next to the side of the road. It was a three-lane carriageway. It was raining and the traffic was heavy. Counsel for the third party even put to the first defendant that the traffic was not heavy. I seriously doubted the propriety of that assertion when the third party himself told the court that he could no longer remember whether the traffic was heavy or light. The first defendant stated that he was aware of EL 8698M, which was three to four car lengths in front of him. He did not expect EL 8698M to stop so suddenly, without giving any signal, and at a spot which was just after the junction of Dunearn Road/ Rifle Range Road and marked with double yellow lines and close to a bus stop. He quickly jammed his brakes but could not avoid the collision. He could not swerve to the right because of the traffic on the second lane. The first defendant said that at the point of impact, the friend (Lee) whom the third party was about to pick up was in the act of opening the rear nearside door. He was positive that Lee had not yet stepped into the car.

The first defendant said that immediately prior to the accident he was only travelling at 50 kmph. He could not have travelled at a higher speed because a passenger had already given signal that he wanted to get down at that bus stop. The first defendant conceded that at that time he did not look at his speedometer to see if his speed was in fact 50 kmph: his assessment of the speed was based on his experience. The case put by the third party's counsel to the first defendant was that, based on the brake marks of 24.4m, the latter was speeding. That was also the case made by the respondent's counsel in his final submission before the magistrate. I should add that the same counsel appeared for both the plaintiff and the third party in the court below.

The learned magistrate in his grounds of decision held that the first defendant was 'clearly negligent in failing to notice the presence of the plaintiff's motor car on a straight road when visibility was so clear'. That was all the reason he gave. But that was not the case of the plaintiff or the third party. It was never put to the first defendant that he had failed to notice the car in front. His evidence that he saw the car in front was never challenged. The case for the plaintiff and the third party was that the first defendant was speeding. Perhaps implied in that assertion was the allegation that the first defendant was following too closely behind EL 8698M. Whatever it was there was no basis for the magistrate to find that the first defendant had failed to notice the respondent's car which was in front of his bus.

It seemed to me that the learned magistrate had failed to correctly appreciate the evidence and the issues put before him. He made no findings whether the third party did stop EL 8698M abruptly without giving any signal; whether the road was wet and the traffic heavy; whether at the point of collision Lee had got into the car; whether the first defendant was speeding; and whether the first defendant was following too closely behind. If nothing at all the 24.4m brake marks, which ran parallel to the side of the road, indicated that the first defendant had noticed the car. It was a different question altogether whether the brake marks indicated excessive speed or following too closely behind.

Having examined the evidence of the third party, I found him to be an untruthful and unreliable witness. On two material points which, in my view, were crucial to the case, it was shown that the third party would not hesitate to say something different to help his own case: whether the road surface was wet and whether the traffic then was heavy. If he had forgotten he should have said that he could not recall. Instead he told the court the opposite of what he had stated in his police report, which was made a day after the accident. He insisted that the road surface was not wet. This went to show that he would not hesitate to tell a lie in order to shift blame on to the other party and save his own skin. In my judgment, his credit had been impeached. No weight should be given to his evidence.

An issue which was crucial to the determination of liability was the question of the exact position of Lee at the time of collision between the two vehicles. Had Lee

got into the car as alleged by the third party? The court did not have the benefit of hearing Lee who would have been a most crucial witness. The third party's counsel told the court below that Lee's employer would not release him to attend court that day. I must say that I thought this excuse seemed flimsy. Even without drawing any adverse inference against the third party on this account, the fact remained that as the credit of the third party had bee impeached, the court was left with only the evidence of the first defendant, the police sketch plan and the two police reports of the first defendant and the third party. In so far as the evidence of the first defendant was concerned, it was clear. The third party had stopped EL 8698M abruptly without giving any signal, just past the junction of Rifle Range Road/Dunearn Road. He did not expect the car to stop there. He braked but could not avoid a collision. The bus was three to four car lengths behind the car. His speed was approximately 50 kmph. He was in fact going to stop at the bus stop just a little distance further as a passenger had already given signal to alight at that bus stop. As I saw it, there was no question of the first defendant not noticing the car in front of him. What the first defendant did not anticipate was the sudden stopping by EL 8698M. I accepted the evidence of the first defendant that when the collision took place, Lee was just opening the rear nearside car door. The car must have stopped at the place where Lee stood or very close to him and he must have rushed forward to open the car door. I may add that the third party's evidence on this aspect was also not entirely consistent. During examination-in-chief he said that Lee was seated in the car and was about to close the door when the collision occurred. In re-examination he said 'Then (Lee) closed the door. The bus knocked from behind.'

I will next consider the 24.4m brake marks. The Highway Code shows that on a wet surface a vehicle travelling at 55 kmph requires, besides reaction time, a braking distance of 25m. Further, as a matter of physics, I believed a heavy vehicle like a bus would probably require a slightly longer braking distance.

Therefore, brake marks of a length of 24.4m were certainly consistent with a speed of 50 kmph or less. On a main roadway like Dunearn Road, with three lanes, a speed of 50 kmph could not in the circumstances be considered to be excessive. Of course exceeding speed limit is not per se negligence, though that may constitute an offence: *Barna* v *Hudes Merchandising Corp.*[4] In my judgment there was no evidence that the bus was speeding. Neither was there any evidence that the bus was following too closely behind.

In my view the sole cause of the accident was the sudden stopping of the car by the third party without giving any signal whatsoever. The road was wet, and traffic heavy. Indeed, in so stopping to pick up Lee, the third party had clearly breached the following rules of the Highway Code:

(i) Rule 88 — before stopping to look into the mirror to make sure it is safe and to give clear signal that you intend to do so;
(ii) Rule 89 — signal must be given in good time;
(iii) Rule 91(d) — no stopping of a vehicle on a main road or on a road carrying fast moving traffic; and
(iv) Rule 91(b) — no stopping near any roadside which is marked with double yellow lines.

There was also some evidence that the third party might have infringed rule 91(i) — stopping within 6m of a junction. He admitted that he stopped within 6m of the junction.

Section 112(4) of the Road Traffic Act (Cap 276, 1985 Ed) expressly provides that a failure on the part of any person to observe any provisions of the Highway Code may in any civil or criminal proceedings be relied upon by any party to the proceedings as tending to establish or to negative any liability which is in question in those proceedings.

In my judgment, the third party must be held solely responsible for the accident. By stopping abruptly on a main roadway without giving any signal, he had created a dangerous situation which was the cause of the accident. The first defendant took the only evasive step possible in the circumstances, ie by braking; yet the accident could not be avoided. It does not follow that in a case of a front-to-back collision the vehicle that followed behind must necessarily be negligent to some extent.

Finally, there was a point of procedure which I ought to mention. The notice of appeal filed by the first and second defendants was only against the decision of the learned magistrate in the third party proceedings and not against the whole decision in the action. Thinking that the appeal was against the entire decision of the magistrate in the action, and in the light of my finding that the third party was solely to blame for the accident, I initially set aside the judgment obtained by the plaintiff against the defendants. Subsequently, when my attention was drawn by the parties to the limited scope of the notice of appeal I altered the original order and ordered that the third party indemnify the defendants to the full extent of the judgment granted against the defendants in the main action.

Appeal allowed.

Solicitors: *Niru & Co; Leong Chua & Wong.*

Reported by *Kevin Mathews*